the emoluments of office abolishes the last distinction between officers *de facto* and *de jure,* and would tend to encourage rather than discourage usurpation of offices. Right to salary is not based on performance of duties, but is created by statute and attaches to the true and not to the mere colorable title. It is not a property right and courts should not attempt to aid an intruder. The New Jersey cases are open to these objections, and the principal case, while open to some of them and contrary to the weight of authority, seeks to establish an equitable rule. "Hard cases make bad law." It is the duty of the legislature and not of the court to compensate those unfortunates who in good faith have rendered vaulable services as officers *de facto.*

PARTNERSHIP—RIGHT OF SURVIVING PARTNER TO COMPENSATION.—The firm of Harrah & Fellows, a trading partnership was dissolved by the death of Fellows on the 18th day of November, 1901, and under order of the court, Harrah continued to carry on the business until the sale of the store on the 26th day of May, 1903. He realized a gross profit of over $6,000.00 for the 18 months that he conducted the business, and claimed a credit of $1,500.00 for his services during that time in addition to his pro rata share in the profits. *Held,* this was a reasonable charge, and plaintiff was entitled to a credit of the amount claimed as compensation for his services in conducting the business and winding up the affairs of the firm. *Harrah* v. *Dyer* (Ind. App. 1911) 96 N. E. 41.

The general rule is, as announced in this case, that a surviving partner is not ordinarily entitled to compensation for personal services rendered by him in winding up the affairs of the partnership, where the same has been dissolved by the death of one of its members: *Beatty,* v. *Wray,* 19 Pa. St. 516, 57 Am. Dec. 677; *Griggs* v. *Clark,* 23 Cal. 427; *Schenkl* v. *Dana,* 118 Mass. 236; *Tillotson* v. *Tillotson,* 34 Conn. 335; *Washburn* v. *Goodman,* 17 Pick. 519; *Berry* v. *Jones,* 11 Heisk. 206, 27 Am. St. Rep. 742; *Burden* v. *Burden,* 1 Ves. & B. 170. *Contra*: *Royster* v. *Johnson,* 73 N. C. 474. The principal case, however, falls under a well recognized exception to the general rule to the effect that where the surviving partner expends his time and labor in the care and management of the partnership property, by which its value is greatly enhanced, he should receive compensation for the same, to be deducted from the increased value of the property. Such services must consist in something more than the mere winding up of the partnership business, and may be, as in the principal case, the continuing of the partnership business for some time after its dissolution: *Brown* v. *DeTastet,* Jacob 284; *Griggs* v. *Clark,* 23 Cal. 427; *Schenkl* v. *Dana,* 118 Mass. 237; *Hite* v. *Hite,* 1 B. Mon. (Ky.) 177; *Condon* v. *Callahan,* 115 Tenn. 285, 89 S. W. 400, 1 L. R. A. (N. S.) 643, 112 Am. St. Rep. 833. Extraordinary or unusual services have been compensated by the courts on the theory of an implied contract: *Maynard* v. *Richards,* 166 Ill. 466, 46 N. E. 1138, 57 Am. St. Rep. 145. Compensation has also been allowed on the theory that those who seek equity must accord it, and that profits due to such services are not due to the property: *Rowell* v. *Rowell,* 122 Wis. 1, 99 N. W. 473. Accordingly where no profits were realized, remuneration was denied: *Re Aldridge,* 2 Ch. 97. But the tendency of the courts is to

deal with such questions on their particular circumstances, rather than by absolute rules: *Thayer* v. *Badger,* 171 Mass. 279, 50 N. E. 541; *Robinson* v. *Simmons,* 146 Mass. 167, 4 Am. St. Rep. 299, 15 N. E. 558. Such compensation must be reasonable: *Cook* v. *Collingridge,* Jacob 624; and barely sufficient to remunerate the survivor for the actual services necessarily rendered or to save him from actual loss: *Hite* v. *Hite,* 1 B. Mon. 177. A different rule has been suggested as to non-trading partnerships where the profits of the firm are the result solely of professional skill and labor: *Sterne* v. *Goep,* 20 Hun. 396; but the adjudicated cases seem generally to make no such distinction: *Denver* v. *Roane,* 99 U. S. 355, 25 L. Ed. 476; *Little* v. *Cadwell,* 101 Cal. 553, 36 Pac. 107, 40 Am. St. Rep. 89. An exhaustive discussion of the whole subject with a collation of all the authorities and leading cases may be found in the note to *Williams* v. *Pederson,* 17 L. R. A. (N. S.) 399.

PLEADING—SPLITTING CAUSE OF ACTION—INJURIES TO PERSON AND PROPERTY.—Plaintiff ,while driving in his carriage, was run down by a trolley car of the defendant company; his horse and carriage were damaged, and the plaintiff himself was injured. Plaintiff sued and recovered for the injury to the horse and carriage and thereafter sued for the injury to himself. The District Court held that plaintiff could recover. The Supreme Court held the first judgment was a bar to the later suit. On appeal to the Court of Errors and Appeals: *Held,* it was not a bar and that both actions could be maintained. *Ochs* v. *Public Service Ry. Co.* (N. J. 1911) 80 Atl. 495.

There are two lines of authorities on this question:—one holding that it is the negligent act which gives rise to the cause of action, and therefore, as there is but the one negligent act, compensation for all damage resulting therefrom must be sought in the one suit. *Doran* v. *Cohen,* 147 Mass. 342; *King* v. *Chicago, M. & St. P. Ry. Co.,* 80 Minn. 83, 82 N. W. 1113; *Von Fragstein* v. *Windler,* 2 Mo. App. 598; the other holding that the test as to the number of causes of action is the number of primary rights of the plaintiff which have been invaded by the wrongful act of the defendant. *Brunsden* v. *Humphrey,* 14 Q. B. D. 141; *Reilly* v. *Sicilian Asphalt Paving Co.,* 170 N. Y. 40, 62 N. E. 772; *Watson* v. *Texas, etc. Co.,* 8 Tex. Civ. App. 144, 27 S. W. 924. These courts hold that by the negligent act of the defendant two primary rights of the plaintiff, the right of person and the right of property, have been invaded, and therefore the plaintiff has two causes of action. The court in the principal case reverses the holding in the Supreme Court (reported in 77 Atl. 533, and noted in 9 MICH. L. REV. 166), and cites and approves of the New York, English and Texas cases, *supra,* and says: "We are of the opinion that there is a clear distinction between the two classes of injuries and that it is the injury, and not alone the negligent act, which gives rise to the right of action, for a negligent act is not in itself actionable and only becomes so when it results in injury to another," and inasmuch as the legislature has created a different period of limitations within which suits may be brought for injuries to person and injuries to property "an inference may justly be drawn that the legislature considered that there was a plain distinction between them and legislated from that point of view."